

Ombudsman promotes service culture and improved citizens' role

Article | January 16, 2012 - 4:47pm | By [Stratis G. Camatsos](#)



It was January 2010 - MEPs chose P. Nikiforos Diamandouros to serve another term as European Ombudsman.

After his victory, Diamandouros expressed his "continued commitment" help spur the European Commission to improve EU access to documents legislation and that he would seek to ensure that citizens benefit fully from the Treaty of Lisbon and the Charter of Fundamental Rights and to strengthen constructive dialogue with EU institutions and bodies to improve service to citizens.

Flash forward to now. The Commission has proposed to make 2013 the European Year of Citizens, which will mark the 20th anniversary of the establishment of Union citizenship under the Maastricht Treaty that entered into force on 1 November 1993.

It will be an initiative to focus on the citizens and the rights that they are afforded. However, practically, it will be an indicator as to how much the citizen has progressed over these years and how much the citizen has been able "to participate in the democratic life of the Union" as foreseen by the Treaty on the Functioning of the European Union.

That is why New Europe spoke to the European Ombudsman to gain a better insight as to whether, in his opinion, these rights afforded to citizens have been adequately represented and protected and what role he plays in trying to close the gap between the European institutions and the European citizen.

New Europe: European citizens' perception of the European institutions is generally not a positive one when it come to transparency. One of your office's surveys last year revealed that 42% of people surveyed were not satisfied with the level of transparency. Other surveys reach around 50%. What do you think is the best course of action to take to improve this perception?

European Ombudsman: I think we should give two answers to this. What you are saying is clearly correct that most citizens have a jaundiced view of this whole issue. However, part of the problem is that citizens have an incomplete understanding of the EU as an entity and of the EU architecture. This of course means that citizens have a much stronger sense of their own national state. Even more concretely, they relate to those aspects of the state that have to do with the welfare state, i.e. education, health, police, courts, social security and retirement benefits. These are the bread and butter issues of the citizens' contact with the state.

Well, these aspects do not appear at the European level because by definition, legally, they are in the domain of the member states. Hence, the lack of the citizens' awareness and knowledge of the European institutions, which really relate to more esoteric and arcane topics like access to documents, infringement of the Treaty, or recruitment of EU staff. In practice, these only touch a very tiny fraction of the entire population. Therefore, the view that citizens have of the European institutions is that they are remote, and therefore, non-transparent.

However, there has been a significant improvement in the last 12 years in terms of the EU's capacity to be able to advance its own transparency. At the beginning of the 21st century, the Union passed legalisation that specifically enhanced transparency, and since that time, there has been a systematic effort to push the frontiers of transparency. But, to put it in context, although there has been much improvement in the last 12 years, during the previous 40 years, there was no concern for transparency because this term was not even in the books.

Nevertheless, the bottom line is that there is clearly a transparency deficit, but that deficit has been understood in terms of the glass becoming increasingly fuller rather than becoming emptier. The last 10 years have been critical but there has been increasing awareness in the EU institutions, that there is a need to serve the European citizens, and this is ultimately a major, if not the major, thing that the EU Ombudsman does.

More than three years after the introduction of the Commission's lobby register, the attempt of bringing lobbying into the open has not had much success. Do you feel that improving transparency in the institutions will curb the power of lobbyists and lobby groups to influence EU law and how?

I would take a somewhat different angle on that one. I don't think that my concern as Ombudsman is who curbs what or who curbs whom. If we have a state of affairs which is characterised as enhanced transparency, then in this type of climate, the lobbyists can do their job and the institutions can do their own. So, I am very much in favour of enhanced transparency.

However, I do not mean infinite transparency either because there is a balance; between openness with respect for the rights of privacy and personal data. Yes, you ought to push for as much transparency as possible without crossing the red line and putting in danger the rights to privacy and data protection, which are equally guaranteed by the European legal order.

One of the institutions that you are able to investigate for maladministration is OLAF, the Anti-Fraud Office. There are many critics of this institution as being too secretive and non-transparent, for example, in investigations where it consistently refuses to allow access to practically any documents based on wide interpretation of the scope of their Statutes. What can be done to change the course of this institution so it can work for the EU citizen also, and prevent it from a potential abuse of power?

OLAF was one of the institutions that was created back in 2001 in this whole spate of regulations designed to increase transparency and financial accountability. What triggered this whole development was the one time ever in the history of the EU where the entire Commission was forced to resign as a body, which was headed by Jacques Santer, following a vote by the European Parliament, when a Commissioner was found to have engaged in improper behaviour. In the wake of this resignation, the Union sought all sorts of ways to reassure the public that it was conscience of making an effort to be transparent. It therefore adopted regulations that concerns openness and transparency, data protection, the financial integrity of European affairs; OLAF is part of this movement to indicate the Commission's sensitivity to this issue.

Historically, OLAF has been, and you are right, very much introverted and secretive. This created all kinds of problems, and the Ombudsman had his share of problems in his relations with OLAF. OLAF, in its earlier days, raised issues concerning due process. However, I am very hopeful now that, under the new director Giovanni Kessler and his determination to make OLAF to do its job and adhere to the requirement of the rule of law, OLAF will be less introverted. My own sense is it is moving in that direction due to the fact that we have received tangible evidence from Mr. Kessler, but we are still monitoring the situation.

My hope is that OLAF has entered a new era, and it remains to be seen whether in fact they are able to do things systematically in combating fraud and at the same time respecting the rights of citizens, of due process, and of the integrity of the institutions.

Do you think that the EU Ombudsman should have the power to investigate national governments when they fail to administer EU law, and what is one tool that you would like to have in your arsenal that you do not have now?

The first part of the question is a very big political question and it came up at the moment of the founding of the Institution, back in 1995. There was some thought originally, particularly from the Spanish government, that the European Ombudsman should have offices in the member states. What finally prevailed was the Danish model, which essentially said that the Ombudsman should confine itself to the European level and should not become involved in

the national level. I am inclined to consider this as a wise course of action because this essentially means that the Ombudsman is not part of a hierarchical structure in which the Ombudsman is the hierarchical superior of his national colleagues. Therefore, I think it is wise to respect the boundaries of national issues.

This institution, regardless of its national or international location, compliments the courts. It acts primarily on the power of persuasion, and does not have the power to impose sanctions; which is exclusively the right of the courts. The Ombudsman therefore has a special place in the constitutional architecture of the EU, as the national ombudsmen have in the constitutional architecture of their member states. If the Ombudsman would become the hierarchical superior in the member states, then he would also be involved in the national legal order in ways that would be detrimental to the Institution.

People consider it a weakness of the European Ombudsman that he cannot impose sanctions. However, I believe that the “teeth” of imposing sanctions are for the courts and the power of persuasion is for the Ombudsman. It is more logical to have the power of persuasion for the Ombudsman and to work and collaborate with his national colleagues in trying to promote particular goals rather than being in competition with him.

Therefore, if the Ombudsman was present in the member states, then there would clearly be turf wars, and then to resolve an issue, he would be subject to court. I do not think that it is a good thing for the office to be subjected to court for decisions taken. The European Ombudsman is happy with the existing system.

For the second part to the question, some people think that it should be the power to impose sanctions, but for the reasons set about above, I do not think this is the case. The other possibility would be the power to intervene before the Union courts, in cases that touch upon his affairs. Although this has not been done before, it is mine and my team's reading of the Treaty of Lisbon that it gives the possibility of the Ombudsman to do this. Therefore, based on this, I do not want another power from the ones that I already obtain.

Staff Regulations do not explicitly guarantee a whistleblower’s protection of identity and sensitive information. As compared to the US, the EU is seen as lagging in having adequate whistleblower laws. One way to expose wrongdoing and maladministration in the institutions is to enhance protection for whistleblowers. What recommendations do you have to improve this area and to encourage whistleblowers to come forward?

It is true that this is a very difficult area in the existing European legal order. In the Staff Regulations, which are about to be changed, Article 22, provisions a and b, provide for whatever there is in terms of whistleblowing. It is my perspective that they do not adequately address the need for the EU administration to be able to take part in resolving an issue before it escalates out of control.

I think the Union ought to be able to ensure and guarantee the conditions for whistleblowing for staff, and I hope that the new regulations will come up with a way to enhance the solutions. My position for whistleblowing is contained in an official letter that I sent to a Member of Parliament who requested information on that.

(In the letter to MEP Marta Andreas en and titled as “Your request for information concerning disclosures under Article 22b of the Staff Regulations”, it states that the 'as complainants,

whistleblowers have procedural rights, including the right to see the Ombudsman's file on their complaint. If the Ombudsman conducts inquiries, the whistle-blower has the opportunity to see and comment on the institution's responses....whistleblower complaints are normally classified as confidential in the interests of the complainant, unless the complainant expressly requests public treatment.' This letter is a public document that can be accessed by anyone).

Late 2011, Greece's PM George Papandreou is on the verge of resigning. One of the names on the list to take over the reins to lead Greece until the next elections was yours. What was your first reaction to this news and did you at any point consider taking the position?

I felt that given the extremely serious state of affairs in my country, it behoved me as a citizen to consider this proposal, which was a great honour for me. This having been said, I certainly engaged in conversations, which means that I certainly considered it, but in the final analysis, I was delighted that the choice of Mr. Papademos was made because he has incomparably better qualifications in the area of public finances than myself, having been a professor of public finance at Columbia University, the economic advisor for the Bank of Greece, the deputy governor of the Bank of Greece, the governor of the Bank of Greece, and the vice-president of the European Central Bank.

Nevertheless, I certainly considered taking the position, but I was also happy to see the person chosen has the requisite knowledge and capacity to be able to address the particular issue that is Greece's major problem.

What are your objectives and goals for your second term that you hope to achieve?

I am working on three particular goals. One is to make maximum use of the opportunities provided for citizens afforded by the Treaty of Lisbon which provides for enhanced dialogue with citizens, enhanced dialogue with national parliaments, enhanced consultations – already I have launched public consultations with the aim of bringing the citizens into greater contact with the EU institutions. So, maximising the opportunities given to citizens by the Treaty of Lisbon to be able to play a more important role.

The second is to further strengthen my efforts to try to educate the European institutions in what I call the basic features of a culture of service; an administrative culture of service to citizens. This means on how best to serve citizens and how best to internalise their obligations as civil servants to apply the obligation to serve citizens in a courteous, efficient, rapid, and polite way.

The third pillar is the logical consequence of applying this. In order to do that, I have to have an office in place to do all these things. I am still in the process of re-organising and re-structuring my office, which I have already significantly done, to ensure that I can deliver on all of these promises.

I hope, by the end of 2012, we will have the new structure in place and that it will be in a way as to convey the message that the Ombudsman is there to promote a culture of service among the institutions but also to produce what is known as an integrated product of information concerning citizens and how citizens ought to be best treated and best informed and best taken care of by the institutions in order to enjoy their rights.

These are the three major pillars I hope to achieve under my second mandate.

It should be noted that the European Ombudsman has just recently produced and published two booklets that give useful guidance to EU citizens and business and for EU institutions, staff, bodies, and agencies. These publications are *Problems with the EU?* *Who can help you?* and *The European Ombudsman's guide to complaints*. These can be provided for upon request from his office, or be downloaded from his website at www.ombudsman.europa.eu.

#TAGGED

Commissioner,
Employment,
Europe,
European Anti-Fraud Office,
European Commission,
European Parliament,
European Union,
European Union,
forward,
George Papandreou,
Giovanni Kessler,
Institutions of the European Union,
Jacques Santer,
Lisbon,
Major,
Ombudsman,
Parliamentary Ombudsman,
Person Career,
Politics,
Politics of the European Union,
Technology,
Treaty of Lisbon,
Whistleblower,